

118564 *Kildoe*

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-205899

DATE: June 2, 1982

MATTER OF: Science Information Services, Inc.

DIGEST:

1. Where agency wishes to consider separate offer to publish medical abstracts commercially and provide agency with printed and machine readable copies on a subscription basis at a price substantially below that anticipated under solicitation for preparation of the abstracts, cancellation of solicitation is reasonable and therefore not legally objectionable.
2. Protest challenging price and other terms proposed by another firm as alternative to requirements stated in canceled solicitation is dismissed as premature since agency advises that it has not initiated action to procure proposed alternative, even though solicitation was canceled, in part, because of opportunity for savings possible under that alternative.

Science Information Services, Inc., (SIS) protests the cancellation of request for proposals No. NIH-NINCDS-81-14 issued by the National Institute of Neurological and Communicative Disorders and Stroke, National Institutes of Health, for epilepsy abstracting services. Because another organization offered to publish the abstracts commercially and provide NIH copies on a subscription basis at a substantially reduced price, although with more limited rights, NIH had a reasonable basis for reconsidering its minimum needs and canceling the solicitation.

Background

As part of its epilepsy information program, NIH has contracted with Excerpta Medica Foundation since 1972 to

prepare monthly abstracts of medical and scientific articles on epilepsy published worldwide. Under this prior contract, Excerpta Medica furnished NIH thirty printed copies and a machine readable tape of the abstracts for Governmental use, with right of republication by NIH. The present request for proposals was issued April 17, 1981 to procure epilepsy abstracting services for a one year period, commencing in 1982, with possible extensions for four additional years. Six proposals were received by the May 18, 1981 closing date, but were not evaluated due to NIH's subsequent reconsideration of its minimum requirements.

By letter of June 8, 1981 Excerpta Medica offered to provide the desired abstracts for a two or three year period without charge except for the cost of recording the materials on computer tape and shipping, estimated at less than \$10,000 per year. Under this proposed arrangement, Excerpta Medica would copyright the abstracts and NIH would receive a license for Governmental use, but not republication. On June 12, Excerpta Medica modified its alternative offer to provide for bi-monthly abstracts at a subscription price of \$9,960 per year. By letter of July 13, NIH's contracting officer inquired whether Excerpta Medica intended to publish the epilepsy abstracts world wide for three years. Excerpta Medica's reply stated that it would offer the abstracts on a subscription basis worldwide for three years, although it reserved the right to make format changes should economic or market conditions so dictate.

On October 16, NIH advised all offerors that the solicitation had been canceled. SIS protested this cancellation to NIH, and, upon NIH's denial, filed a timely protest with this Office.

Protest

The protester contends that NIH's cancellation of the solicitation was improper and should be rescinded. In the protester's view, Excerpta Medica's proposed price for its alternate is excessive considering the cost of duplicating computer tapes. The protester further notes that Excerpta Medica's proposed alternate will only give NIH a license to use the abstracts for Governmental purpose without right of republication.

NIH argues that in a negotiated procurement, the contracting agency need only establish a reasonable basis for cancellation. Since Excerpta Medica offered to meet NIH's needs in a considerably less expensive manner than NIH anticipated, NIH contends that it had a reasonable basis for cancellation. Finally, NIH argues that any protest regarding Excerpta Medica's alternative offer is premature because NIH has not initiated a procurement to obtain the abstracts on the basis of that offer.

Analysis

When NIH issued the solicitation it obviously believed that the Federal interest required NIH control of the content, format and other particulars of the abstracts, as well as a right of republication by NIH. With the exceptions of Government control and right of republication, Excerpta Medica's proposed substitute offered to provide NIH essentially the same services and deliverables NIH sought under the solicitation, but at a substantially reduced price: less than \$10,000 per year, compared to the \$63,264 NIH paid in 1981. This would result in a total estimated savings of \$150,000 over three years--which potential savings the protester has not questioned. NIH then sought and obtained assurance that the epilepsy abstracts would be published worldwide for three years should NIH agree to accept Excerpta Medica's proposed alternative. Consequently, NIH's cancellation of the solicitation amounts to a reconsideration of the agency's minimum requirements in light of both the substantial savings possible under Excerpta Medica's alternative proposal and the concomitant loss of direct control over the abstracts.

To cancel a negotiated solicitation, the Government need only have a reasonable basis for doing so. Management Services Incorporated, B-197443, June 6, 1980, 80-1 CPD 394. We have upheld an agency's cancellation of a negotiated procurement where circumstances indicated that the item solicited was no longer required. A. B. Machine Works, Inc., B-187563, September 7, 1977, 77-2 CPD 177. Further, we have recognized that the potential for cost savings is a legitimate basis for canceling

a negotiated solicitation, Honeywell Information Systems, Inc., B-193177.2, December 6, 1979, 79-2 CPD 392. Consequently, in light of the potential savings associated with Excerpta Medica's proposed alternative, we believe that the contracting officer had a reasonable basis for canceling the solicitation in order to reconsider NIH's minimum requirements for epilepsy abstracts.

As to the protester's contention that Excerpta Medica's proposed price for reproducing computer tapes is excessive, Excerpta Medica's more recent letter of June 12, 1981 offered to provide the tapes on a subscription basis, not for reproduction costs. Under either alternative, NIH would be required to justify the reasonableness of Excerpta Medica's price should NIH accept its offer. Federal Procurement Regulations § 1-3.807-2. In any event, NIH has not as yet decided to accept Excerpta Medica's proposed alternative to the canceled solicitation as evidenced by NIH's publication of a "source sought" notice in the April 27, 1982 issue of the Commerce Business Daily. Until such time as the agency has formulated its procurement plans, a protest against a possible noncompetitive award is premature. Aero Corporation, B-194445.2, October 17, 1979, 79-2 CPD 262. The protest against the terms of a possible noncompetitive award to Excerpta Medica is therefore dismissed.

The protest is denied in part and dismissed in part.

for *Milton J. Jorolan*
Comptroller General
of the United States